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1879

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~319.~~ 92

NAPOLEON COLLINS, APPELLANT,

vs.

THE STEAMER FLORIDA, HER TACKLE, ETC.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED DECEMBER 14, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 319.

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THE STEAMER FLORIDA, HER TACKLE, ETC.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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1 *Libel of information.—Filed Ap'l 24th*, 1871.

In the supreme court of the District of Columbia, holding a district court of the United States for said District.

NAPOLEON COLLINS *vs.* THE STEAMER FLORIDA, HER TACKLE, APPAREL and armament.	}	229. Dist. court docket, 1.

To the honorable justices of the supreme court of the District of Columbia, sitting in admiralty:

The libel of information of Napoleon Collins, commodore in the Navy of the United States, who prosecutes herein in behalf of and in the interest of himself and the officers and crew of the United States steamer Wachusett.

The libellant sets forth, declares, and propounds as follows:

1. That heretofore and during the late war of the rebellion, to wit,
2 on the 7th day of October, 1864, the said United States steamer Wachusett, then commanded by him, captured, in the bay of San Salvador, Brazil, the Confederate steamer known as the Florida, and that the said steamer Florida was brought to Hampton Roads for adjudication, and was placed in the possession and charge of the admiral then commanding the North Atlantic squadron, and was and is a lawful prize to the United States of America, and the captors thereof.

2. That said steamer Florida, on the 28th of November, 1864, sunk off Newport News, without fault of the libellant.

3. That the Secretary of the Navy has not at any time designated any district for the institution of proceedings for the adjudication of said prize, and no proceedings for adjudication have been heretofore instituted by any parties; wherefore the libellant has become and is entitled to prosecute this information in this behalf before any district court of the United States.

3 4. Wherefore the libellant prays this honorable court to condemn the said rebel steamer Florida, her tackle, apparel, and armament, and the value thereof, as good and lawful prize; to direct and decree the distribution of the value thereof among the officers and crew of the said steamer Wachusett; and such other relief to give as to the court shall seem meet, and, to that end, that due process may issue and proof be taken and due proceedings be had according to the course of admiralty in cases of prize.

NAPOLEON COLLINS,
By WM. E. CHANDLER,
Proctor in Admiralty.

BENJ. F. BUTLER,
Proctor, &c.

Order for monition.—Filed April 24, 1871.

Let the monition issue as prayed, returnable to the June term, 1871, and publication of notice of this proceeding to be made at least three times a week in the Morning Chronicle & Evening Star for a period of not less than one month previous to said return day, warning all persons who may have claims or interests to appear, &c.

ANDREW WYLIE, *Justice.*

4 *Warrant of monition.—Issued April 24, 1871.*

In the supreme court of the District of Columbia, April 24th, 1871.

NAPOLEON COLLINS
vs.
THE STEAMER FLORIDA, HER TACKLE, APPAREL and armament. } No. 229. Dist. court.

The President of the United States to the marshal of the District of Columbia, greeting:

The United States steamer Wachusett having, on or about the 7th day of October, 1864, captured, as lawful prize, the steamer Florida, her tackle, apparel, and armament, and the commodore of the United States steamer Wachusett having libelled said steamer in this court as such lawful prize, and prayed for her condemnation as such, for the reasons set forth in the libel, and that all persons interested in said steamer, &c., may be cited to answer in the premises; and, the court having ordered process to issue as prayed:

You are, therefore, hereby commanded, by advertisement in the
5 Morning Chronicle and Evening Star, newspapers published in this District, and by posting a notification at the court-house door of this court, and by proclamation at the same place twice a week until the day of trial, give at least 30 days' public notice of said libel of said vessel, &c., and that the court has appointed 1st Monday of June, 1871, and the court-room aforesaid, as the time and place of the trial of said cause, when and where all persons interested or claiming an interest in said steamer, &c., must appear and make their allegations in that behalf.

And having so done, make return of this writ into the clerk's office of the said court, so endorsed as to show the time and manner of their execution.

Witness, D. K. Cartter, chief justice of said court.

[SEAL.] R. J. MEIGS, *Clerk.*

6 *Marshal's return.*

Served copy of the within monition on Geo. P. Fisher, dist. attorney, D. C., and Geo. M. Robeson, Secretary of the Navy, this 26th of April, 1871, and published notice in the Chronicle and Evening Star, three times a week for one month, the first publication on the 26th of April, 1871.

A. SHARP, *Marshal.*

APRIL 26TH, '71.
WM. E. CHANDLER.
B. F. BUTLER.
S'd Apr. 26, '71.

O'CONNELL.

Motion to amend the libel.—Filed May 15th, 1873.

NAPOLEON COLLINS
vs.
THE STEAMER FLORIDA. } Prize. No. 229.

Now said Collins comes into court here and moves to amend this libe

of information by inserting an allegation in apt and proper words that
he prosecutes this suit as well in behalf of the United States as
7 in behalf of himself and the officers and crew of the United States
steamer Wachusett, and prays condemnation in prize of the vessel and property libelled to the use of the United States.

By his proctors and advocates.

BENJ. F. BUTLER.
WM. E. CHANDLER.
FRANK W. HACKETT.

Appointment of special ass't att'y general.—Filed May 15th, 1873.

DEPARTMENT OF JUSTICE,
Washington, May 1st, 1873.

Hon. R. M. CORWINE,
Washington, D. C.:

SIR: You are hereby appointed special assistant attorney-general of the United States to act as counsel in the defence of the case of Napoleon Collins vs. The Steamer Florida, now pending in the supreme court of the District of Columbia.

If this appointment be accepted you will take and transmit to
8 to this department the oath required by law.

For you services under this appointment a reasonable compensation, to be determined by this department, will be paid to you.

Very respectfully,
(Signed) GEO. H. WILLIAMS,
Attorney-General.

UNITED STATES OF AMERICA,
City of Washington, District of Columbia, ss:

Personally appeared before me Richard M. Corwine, who makes oath and says that he will faithfully and honestly support the Constitution of the United States, and will honestly and faithfully discharge the duties of special assistant attorney-general of the United States according to law.

(Signed) R. M. CORWINE.

Sworn to and subscribed before me this 6th day of May, 1873.
(Signed) ARCH. HOPKINS,
Ch. Clerk U. S. Court of Claims.

A true copy, original being filed in the Dept. of Justice.
R. M. CORWINE.

9 *Order of court overruling motion to amend libel.—Filed May 16th, 1873.*

In the supreme court of the District of Columbia, holding the district court in admiralty.

NAPOLEON COLLINS
vs.
THE STEAMER FLORIDA. } Prize. No. 229.

This case coming on to be heard on the motion of the libellant to amend the libel by "inserting an allegation in apt and proper words that he prosecutes this suit as well in behalf of the United States as in

behalf of himself and the officers and crew of the United States steamer Wachusett, and prays condemnation in prize of the vessel and property libelled," and the United States appearing by George P. Fisher, United States attorney for the District of Columbia, and Richard M. Corwine, special assistant attorney-general, and objecting to the motion to amend, and, after argument of counsel on both sides, the motion is overruled and denied, to which order of the court libellant excepts and exception is allowed.

D. C. HUMPHREYS, *Justice.*

MAY 16, 1873.

10 *Motion to dismiss libel of information.—Filed June 3d, 1873.*

In the supreme court of the District of Columbia, the thirtieth day of May, 1873.

NAPOLEON COLLINS *vs.* THE STEAMER FLORIDA. } Prize. No. 229.

Motion to dismiss libel of information.

And now comes George P. Fisher, attorney of the United States for the District of Columbia, and moves the court here to dismiss the libel of information filed in the above-entitled cause for the following reasons, viz:

1. For that admitting the capture of said steamer Florida to have been made by authority of the United States, or to have been adopted and ratified by the President of the United States, this court has no jurisdiction in the case; but jurisdiction attaches to east'n dist. Va.

2. For that the capture of said steamer Florida was not a capture made as prize by authority of the United States, nor was said capture adopted and ratified by the President of the United States.

11 3. For that it appears upon the face of the libel of information that the capture of said steamer Florida was an unlawful capture, the same having been made within the waters of Brazil, a neutral and friendly power.

GEO. P. FISHER,
Att'y of U. S. for D. C.

List of papers on which the above motion is founded.

1. Copy of note from Señor Iynacio de Avellar Barboza da Silva to Sec'y Seward, dated Dec. 12, 1864.
2. Sec'y Seward's reply to above, dated Dec. 26, 1864.
3. Extract of letter of Consul T. F. Wilson to Sec'y Seward, dated Nov. 14, 1864.
4. Sec'y Seward's reply to Wilson, dated Dec. 29, 1864.
5. Proceedings of court-martial in the trial of Napoleon Collins for illegal capture of steamer Florida.

12 6. Copy of report of N. Collins to Secretary of the Navy.

To BENJAMIN F. BUTLER, WILLIAM E. CHANDLER, and FRANK HACKETT, Esquires,
Proctors and Advocates for Napoleon Collins:

GENTLEMEN: Please take notice that on Thursday, the fifth day of

June next (1873), or as soon thereafter as the attention of the court can be had, I shall ask that the foregoing motion may be heard and determined; also please receive herewith a copy of the papers upon which said motion is founded.

GEO. P. FISHER,
Att'y of U. S. for D. C.

MAY 30TH, 1873.

Service of the above motion and a copy of the papers as per above list is hereby acknowledged.

FRANK W. HACKETT,
Of Counsel for Libelants.

13 *Protest and ans. of U. S. att'y.—Filed Dec. 4th, 1873.*

In the supreme court of the District of Columbia.

NAPOLEON COLLINS
vs.
THE STEAMER FLORIDA. } In admiralty. No. 229.

And now comes George P. Fisher, the attorney of the United States for the District of Columbia, in obedience to the provisions of section 4 of chapter CLXXIV of the acts of Congress of the United States entitled "An act to regulate prize proceedings and the distribution of prize-money, and for other purposes," approved June 30th, 1864, and representing the interests of the United States, says that this honorable court cannot and ought not to entertain jurisdiction in the above-entitled cause for the following reasons:

1. Because the said Napoleon Collins, the commanding officer of the steamer Wachusett, the vessel alleged in the libel of information to have made the capture of said steamer Florida, at the time of said capture did not secure the documents of said steamer Florida, including
14 the log-book with all the documents, letters, and other papers on board said steamer Florida, and make an inventory of the same, and seal them up and send them with the inventory to this honorable court, or to any other court in which proceedings were to be had, with a written statement that they are all the papers found, and in the condition in which they were found, or explaining the absence of any documents or papers or any change in their condition as required by the first section of the act of Congress aforesaid.

2. Because said commanding officer did not send to this honorable court or to any other court where proceedings were to be had, as witnesses, the master and one or more officers, the purser, or agent of the alleged prize, or any person found on board said steamer Florida whom he, the said commanding officer, supposed to be interested in or to have knowledge respecting the title, national character, or destination
15 of said alleged prize; nor did said commanding officer send the said alleged prize, with the documents, papers, and witnesses, under charge of a competent prize master and prize crew into any port for adjudication, as he was required to do by the provisions of said first section of said act of June 30, 1864.

3. Because said commanding officer did not send said alleged prize, with her documents, papers, officers, and other witnesses and proofs, into any port designated by instructions from superior authority; nor did he, in the absence of such instructions, select and send her into such

port as he deemed most convenient, in view of the interests of probable claimants, as well as of the captors, as he was required to do by the provisions of said first section of said act of June 30, 1864.

4. Because, if any prize master were placed in charge of said alleged prize, and if any port were selected by said commanding officer of the Wachusett, as the one most convenient in view of the interest of
16 probable claimants as well as the captors as aforesaid, the said prize master did not make his way diligently to the said selected port and there immediately deliver to a prize commissioner the documents and papers and the inventory thereof, and make affidavit that they were the same, and in the same condition as delivered to him, or explaining any absence or change of condition as delivered to him, or explaining any absence or change of condition therein, and that the alleged prize-property was in the same condition as delivered to him, or explaining any loss or damage thereto; nor did said prize master report to any district attorney of the United States, or give said attorney any information in his, said prize master's, possession, respecting the alleged prize and her capture; nor deliver over the persons sent as witnesses, or the alleged prize, to the custody of the marshal of any district to be retained by him till taken therefrom by process of the prize court,
17 as required by the provisions of section 3 of said act of June 30, 1864.

5. Because, admitting the said steamer Florida to have been a lawful prize, and that she was brought into Hampton Roads for the purpose of adjudication, as alleged in said libel of information, then in that case jurisdiction of said steamer Florida attached to the eastern district of Virginia, and could not be transfer'ed to this honorable court. It is only when no property can be sent in for adjudication, and when the Secretary of the Navy shall not within three months after the capture of any prize designate a district for the institution of proceedings, that the captors of an alleged lawful prize may institute proceedings for condemnation in a district other than that in which the alleged prize is brought for the purpose of adjudication.

6. Because the capture of said steamer Florida was not a capture made as prize by authority of the United States, or adopted
18 and ratified by the President of the United States, and it is only to such captures, so made or so adopted and ratified, that the provisions of said act of June 30th, 1864, can be applied.

7. Because it appears upon the face of the libel of information filed in this court that the capture of said steamer Florida was an unlawful capture, the same having been made within the waters of the Government of Brazil, a neutral and friendly power; and the said steamer Florida being, as is admitted and shown by the said libel of information, an enemy vessel of war captured in neutral territory, no jurisdiction could attach to this honorable court or to any other court of admiralty, since all questions arising out of such capture were primarily questions of diplomacy, to be properly settled by the Executive Department of the United States within the Government of Brazil, whose rights of neutrality had been grossly invaded by said capture,
19 and in this case said questions were actually settled, determined, and forever closed by the action of said Executive Department, as will fully appear by the correspondence between the two governments, hereinafter referred to and made a part hereof.

And the said George P. Fisher, attorney as aforesaid, having thus protested against the jurisdiction of this honorable court in the matter of the capture of said steamer Florida, further avers and insists that

said capture was illegal, and that said steamer cannot be condemned as lawful prize, because, as appears upon the face of said libel of information, said capture was made within the territorial limits of the Government of Brazil, in contravention of the law of nations, in contravention of the laws of the United States, in contravention of the orders and instructions of the President of the United States, made and given through the Secretary of the Navy to said captors, and in open
20 contempt and violation of the sovereignty of the Government of Brazil, a neutral power, then on friendly terms and in treaty relations with the Government of the United States.

That the Government of Brazil, as soon as it had been made cognizant of the capture of the said steamer Florida in the port of Bahia, and under the very cover of the guns of the fortifications protecting the same, immediately protested against this flag'ant violation of her territory, and demanded the restitution of said steamer Florida, and her return to the port whence, in flagrant violation of the law of nations, she had been taken; that the authorities of the United States, in response to said protest and demand of restitution, made prompt and ample disavowal of the act of the libellant in capturing said steamer Florida in the manner aforesaid, and denounced the same as an unauthorized, unlawful, and indefensible exercise of the naval power
21 of the United States, recalled consul of the United States at Bahia, who had co-operated with said libellant in said capture, suspended the commanding officer of the Wachusett for his unauthorized conduct, and assured the Government of Brazil that said steamer Florida would have been promptly returned to said harbor of Bahia had she not accidentally been sunk whilst lying at anchor in Hampton Roads in a few days after her arrival there, thus rendering her restitution a matter of impossibility.

And said attorney further submits that although the fact of a capture having been made in neutral waters is not, as a general rule, a matter of defense of which the owner of a vessel may avail in a prize court, yet that in this case the Brazilian Government having asserted her right to indemnity for the violation of her territory, and receive satisfactory reparation, in the acknowledgement of the wrong done, in the prompt and ample disavowal of the act of the captors, in the dis-
22 missal of the American consul at Bahia and the suspension of the commanding officer of the capturing vessel, and in the salute made to the Brazilian flag by a United States war-vessel in the violated port of Bahia, and in the assurance given that the captured steamer would have been restored willingly but for the unforeseen accident which rendered such restitution impossible, it is entirely competent for the United States, speaking for the Government of Brazil as well as in its own behalf, to avail of such defense in a prize court the same as Brazil through her own accredited agent might have done, had not the questions arising out of the illegal capture been settled and determined by diplomatic negotiation had between the two governments.

And the said attorney further says that the libellant has no legal right to assert and maintain his libel, because the alleged capture of the Florida was made by the officers and crew of the United States
23 steamer Wachusett, a vessel then belonging to the Navy of the United States, the property of the United States, duly commissioned, and then sailing under orders from the United States, issued by the Secretary of the Navy, and that said libellant and the other officers and the crew of said vessel, the Wachusett, and the vessel itself, were in the service of said United States Navy, acting solely under the orders

of the Secretary of the Navy, possessing no lawful rights which were not derived from the Government of the United States; and that said libellant, his co-officers, and crew, could make no lawful capture that was not made in the name of the United States, and for the benefit and use of the United States, and under the orders of the United States, and that any capture not so made was utterly void and without warrant of law. And it is respectfully submitted that after full and satisfactory reparation having been made by the Government of the United States, as hereinbefore set forth, by the total and absolute dis-
24 avowal and denunciation of the capture of the Florida, the suspension of the libellant from his command as an officer of the United States Navy for the act of capture in neutral waters, the recall of the American consul at Bahia for his participation in that act, the salute made to the Brazilian flag in the violated port, and the assurance given of the willing disposition of the United States to make restitution, as an acknowledged right in Brazil under the law of nations, but for the destruction of the captured vessel, the attitude of the Government of the United States in the condemnation by her prize courts of property which the Executive Department had long since acknowledged to have been captured in violation of the principles of international law, would appear to the civilized world as one absurdly inconsistent and ridiculously wrong.

And the said attorney further respectfully submits that at the
25 time of the filing of said libel of information the said steamer Florida was not and for more than six years had not been in existence, she having been for that length of time sunk and destroyed, as hereinbefore stated, and deemed a total loss; that said steamer Florida has never been recovered, nor has she been condemned as prize of war, either before or since she was so sunk and destroyed, and cannot now be reached or recovered to respond to any decree of condemnation as prize of war; and that, as there is no res in existence which can be the subject-matter of condemnation or sale, there can be no object in seeking the action of this honorable court except it be merely to aid the libellant in ascertaining the value of the vessel unlawfully captured, as aforesaid, with the view of making it the basis of a demand of the Congress of the United States for compensation to the officers and crew of the Wachusett for having made a capture in neutral waters which
26 the Executive Department had denounced as unlawfully made, and for which unlawful act ample apology has been made by the Government of the United States.

And the said attorney herewith submits and makes part hereof copies of the following documents and papers, viz:

No. 1. A copy of a translation of a note from Senor Ignacio de Avillar Barboza de Silva to the Secretary of State of the United States, dated Dec'r 12, 1864.

No. 2. A copy of Secretary Seward's reply to Senor Ignacio de Avillar Barboza de Silva, dated Dec'r 26, 1864.

No. 3. Copy of extract from the note of Consul Thomas F. Wilson to Secretary Seward, dated Nov. 14, 1864.

No. 4. Copy of Secretary Seward's reply to Consul Wilson, dated Dec'r 29, 1864.

No. 5. Copy of records of the U. S. Navy Department, embracing letters from Sec'y of State to Sec'y of Navy, dated Aug. 4, 1862; also reply of Sec'y of the Navy thereto, dated Aug. 16, 1862; also circular
27 instructions to naval officers from Sec'y Navy, dated Aug. 18, 1862; also telegram from Captain Winslow to the Sec'y of the

Navy, dated November 7, 1864; also report of Commander Napoleon Collins to the Secretary of the Navy, dated October 31, 1864; also proceedings of court-martial in the case of charges proferred against Commander Collins.

GEO. P. FISHER.
U. S. Att'y D. C.

28 UNITED STATES OF AMERICA,
Department of State:

To all to whom these presents shall come, greeting:

I certify, the the document hereunto annexed is a true copy of the original on file in this department.

In testimony whereof, I, Hamilton Fish, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this sixteenth day of May, A. D. 1873, and of the Independence of the United States of America the ninety-seventh.

[SEAL.] HAMILTON FISH.

Filed Dec. 4, 1873.

29 [Translation.]

IMPERIAL LEGATION OF BRAZIL,
Washington, 12 *December*, 1864.

The undersigned, chargé d'affair's, ad interim, of His Majesty the Emperor of Brazil, has just received orders from his government to address himself, without delay, to that of the United States of North America, about an act of most trancendent gravity which has occur'ed in the port of the capital of the Province of Bahia, on the morning of the 7th day of October last, which constitutes a manifest violation of the territorial jurisdiction of the empire, and an offence to its honor and sovereignty, committed by the war steamer Wachusett, belonging to the Navy of the Union.

On the 4th of the month referred to, there arrived at that port, where already had been for some days the Wachusett, the steamer Florida of the Confederate service, for the purpose, as declared by her com-
30 mander to the President of the Province, of supplying herself with alimentary provisions and coal, and to repair some of the tubes of her machinery.

The President, proceeding in accordance with the policy of neutrality which the empire had resolved to adopt on the question on which, unhappily, these states find themselves involved, and in conformity with the instructions issued in this respect by the imperial government on the 23rd of June, of the year last past, assented to the application of the commander of the Florida, and fixed the term of 48 hours for laying in provisions; fixing, dependent on the final examination of the machinist of the arsenal, the determination of the residue of the time which, perchance, should be judged indispensable for finishing the repairs.

The same authority at once took, with the greatest impartiality, all measures necessary to avoid any conflict between the two hostile steamers.

31 The Florida was placed under cover of the battery of the Brazillian corvette, D. Januaria, on the side next the shore, at the request of her commander, who, resting on the belief with which, without doubt,

the chief authority of the province could not but be inspired, considered himself secure from any attack from his adversary, and in this confidence not only remained on shore at night, but also gave liberty to a great part of the crew of his ship to do so. It behooves me to say that as soon as the Confederate steamer entered the port of Bahia, the American consul, Wilson, addressed a dispatch to the President, claiming that the Florida should not be admitted to free pra'tice, and that, on the contrary, she should be detained; alleging for reason, that this vessel had, in concert with the Alabama, violated the neutrality of the empire by making captures in the year 1863, near island of Fernando de Noronha.

Such exaggerated pretentions founded on facts not established
32 which had already been the subject of discussion between the imperial government and the legation of the United States could not be nor were they listened to.

If the President had refused the hospitality solicited by the commander of the Florida, he would have infringed not only the obligations of neutrality of the empire, but also those of humanity, because that steamer, coming from Teneriffe, had been 61 days at sea, was short of provisions, and with her engine in the worst condition. To detain her as the consul claimed would have been to take from one belligerent the enjoyment of its rights, and to make the empire, de facto, a coworker and ally of the other belligerent.

Afterwards, the President having expressed to the consul himself that he hoped from his honor and loyalty towards a friendly nation that he would arrange with the commander of the Wachusett to respect the neutrality and sovereignty of the empire, he answered in the
33 affirmative, the consul pledging his word of honor.

Things remained in this condition, the term of 48 hours being to expire at 1 o'clock on the afternoon of the 7th, when about dawn of that day the steamer Wachusett, suddenly leaving her anchorage, passed between the Brazillian ships of war, and approached the Florida. In passing across the bow of the Brazillian corvette, D. Januaria, she was hailed from on board to come to anchor, but as she paid no attention to this intimation, and continued to approach the Florida, opening upon her at the same time the discharge of a gun and some musketry, the commander of the naval division of the empire stationed in those waters ordered an officer on board the Wachusett to intimate to its commander that the vessels of the division and the forts would open fire upon him if he should attack the Florida. From the Wachusett refusal was given to the Brazillian officer to come on board, but the officer of the deck hailed him, saying in reply that he received
34 the intimation, would do nothing more, and was going back to his anchorage.

The commander of the Brazillian division, nevertheless, thought it proper to ratify the intimation by discharging a gun, upon which complete silence followed between the two ships, Wachusett and Florida.

At the time this was passing the corvette D. Januaria, on board which the commander of the Brazillian division had hoisted his flag, lay head to the flood; the steamer Florida anchored (per B B) inside of her, and between her and the corvette the Wachusett, with her wheels stopped.

The commander of division, then observing, notwithstanding the darkness of the night, that the Wachusett, from the position in which she was, was going ahead, and was passing the bows of the corvette in the direction E B, was convinced that she was, in fact, going to her anchorage, thus fulfiling the promise she gave.

35 But a few moments afterwards, perceiving that the Florida was

in motion, the commander of division perceived that the Wachusett was taking her off in tow by means of a long cable.

Surprized by such an extraordinary attempt, the said commander at once undertook to repress it by force, and repel, as behooves him, the wrong thus done to the dignity and sovereignty of the empire.

Availing himself, however, of the darkness of the night and other circumstances, the commander of the Wachusett succeeded in carrying his prize over the bar, and escaping the just punishment he deserved for such an unusual proceeding.

Consul Wilson, evidently partaking in the outrage, preferred to abandon his post, withdrawing on board the Wachusett.

The government of His Majesty, as soon as it had official information of what had happened, addressed to the United States legation at Rio de Janerio a note, in which, setting out a succinct exposition of
36 the fact, it declared that it had not hesitated to believe that the legation would itself hasten to give all proper assurances that the Government of the Union would attend to the just reclamation of the empire as promptly and fully as the gravity of the case demanded.

Responsive to this expectation, the worthy representative of the United States promptly transmitted his reply, in which he declares his conviction that his government will give to that of the empire the reparation which is due to it.

Such are the facts to which the undersigned has received order to call the earnest attention of the Hon. William H. Seward, Secretary of State of the United States.

The principles of international law which regulate this matter are patent and ignored by none, and in respect of them there is not the least divergence among the most esteemed publicists.

37 The undersigned would not do justice to the high capacity of the Hon. Mr. Seward if, peradventure, he should enter in this respect upon fuller developments. He restricts himself to such a degree as only to recall a memorable example in which these principles, invariably sustained by the United States, had entire application.

In 1793, the great Washington being then President of the United States, and the illustrious Jefferson Secretary of State, the French frigate L'Embuscade captured the English ship Grange in Delaware Bay, thus violating the neutrality and territorial sovereignty of the Union. The American Government remonstrated energetically against that violation, and required from the Government of the French Republic not only the immediate delivery of the captured vessel, but also the full liberation of the persons found on board.

This reclamation was promptly satisfied. Much more grave,
38 certainly, is the conflict which occur'ed in the port of the province of Bahia which is the object of this note. From the peculiar circumstances which accompanied it, this act has no parallel in the annals of naval warfare.

The commander of the Wachusett not only gravely infringed the territorial immunities of Brazil, but disregarded the laws of war, by attacking treacherously in the night an undefended ship, whose crew was very reduced, as more than fifty men were on shore, with the commander and several officers, while she lay off her guard, under the shadow of the protection guaranteed to her by the neutrality of the empire.

And so palpable was the violation, and so manifest the offence, that the enlightened American press was almost unanimous in condemning the unjustifiable proceeding of Commander Collins.

The undersigned, therefore, sustaining himself on the unshaken
39 principles of international law above alluded to, claims from the Government of the United States of North America, in the name and by order of the government of His Majesty the Emperor of Brazil, the solemn and full reparation which is due to the empire for the enormous outrage committed by the commander of the Wachusett.

That reparation comprehends two distinct points, that which respects the offence done to the national dignity and sovereignty by the violation of neutrality, and that which concerns the damage done to the injured belligerent, chiefly from the circumstance of its having been done in bad faith, and with evident disregard of the laws of war.

As to the first point, the Imperial Government claims—

1st. Solemn and public declaration by the Government of the Union that it was surprised by the unusual action of the commander of
40 the Wachusett, which it highly rebukes and condemns, regretting that it should have occur'ed.

2nd. The immediate dismissal of said commander, followed by the commencement of proper process.

3rd. And lastly a salute of 21 guns to be given in the port of the capital of Bahia, by some vessel of war of the United States, having hoisted at her mast-head during such salute the Brazillian flag.

As to what touches the second point, the capture of the Florida being evidently illegal and void, the government of the undersigned claims, as reparation, full liberty to the crew and all individuals who were on board the Florida when she was captured; and the delivery of the vessel to the government of the Emperor, that of the Union ordering it to take place in some port of the empire, to the end that it be duly returned.

The just reclamation of the Imperial Government being thus
41 reduced to form, the undersigned awaits the reply of the Hon. William H. Seward, and confiding fully in the high intelligence and rectitude of the Government of the United States, he cannot doubt that it will be as satisfactory as is required by the incontestible right which upholds the empire, and the immense gravity of the offence cast upon it.

The chargé d'affairs of Brazil, ad interim, avails of this opportunity to have the honor to reiterate to his excellency the protestations of his most distinguished consideration.

IGNACIO DE AVELLAR BARBOZA DA SILVA.

To the honorable WILLIAM H. SEWARD,
Secretary of State of the United States.

42 UNITED STATES OF AMERICA,
Department of State:

To all to whom these presents shall come, greeting:

I certify that the document hereunto annexed is a true copy from the records in this department.

In testimony whereof, I, Hamilton Fish, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this sixteenth day of May, A. D. 1873, and of the Independence of the United States of America the ninety-seventh.

[SEAL.] HAMILTON FISH.

Filed Dec. 4, 1873.

43 (Copy.)

DEPARTMENT OF STATE,
Washington, 26th December, 1864.

Señhor IGNACIO DE AVILLAR BARBOZA DA SILVA, &c., &c., &c.:

SIR: I have the honor to acknowledge the receipt of your note which sets forth the sentiments of the Imperial Government of Brazil concerning the capture of the Florida by the United States war steamer Wachusetts in the port of Bahia.

You will of course explain to your government that, owing to an understanding between you and myself, your note, although it bears date of the 12th December, was not submitted to me until the 21st instant.

Jealousy of foreign intervention in every form and absolute
44 non-intervention in the domestic affairs of foreign nations are cardinal principles in the policy of the United States. You have, therefore, justly expected that the President would disavow and regret the proceedings at Bahia. He will suspend Captain Collins and direct him to appear before a court-martial.

The consul at Bahia admits that he advised and incited the captain and was active in the proceedings. He will therefore be dismissed. The flag of Brazil will receive from the United States Navy the honor customary in the intercourse of friendly maritime powers.

It is, however, not to be understood that this government admits or gives credit to the charges of falsehood, treachery, and deception which you have brought against the captain and the consul. These charges are denied on the authority of the officers accused.

You will also be pleased to understand that the answer now
45 given to your representation rests exclusively upon the ground that the capture of the Florida was an unauthorized, unlawful, and indefensible exercise of the naval force of the United States, within a foreign country, in defiance of its established and duly recognized government.

This government disallows your assumption that the insurgents of this country are a lawful naval belligerent, and, on the contrary, it maintains that the ascription of that character by the Government of Brazil to insurgent citizens of the United States, who have hitherto been, and who still are, destitute of naval forces, ports, and courts, is an act of intervention in derogation of the law of nations, and unfriendly and wrongful, as it is manifestly injurious to the United States.

So, also, this government disallows your assumption that the Florida belonged to the aforementioned insurgents, and maintained, on the
46 contrary, that the vessel, like the Alabama, was a pirate, belonging to no nation or lawful belligerent, and therefore that the harboring and supplying of these piratical ships and their crews in Brazillian ports, were wrongs and injuries for which Brazil justly owes reparation to the United States, as ample as the reparation which she now receives from them.

They hope and confidently expect this reciproisty in good time to restore the harmony and friendship which are so essential to the welfare and safety of the two countries.

In the positions which I have thus assumed, the Imperial Government will recognize an adherence to rights which have been constantly asserted, and an enduring sense of injuries which have been the subject of earnest remonstrance by the United States during the last three years.

The Government of Brazil is again informed that these positions of this government are no longer deemed open to argument.

47 It does not, however, belong to the captains of the ships of war of the United States or to the commanders of their armies, or to their vessels residing in foreign ports, acting without the authority of Congress and without even executive directions, and choosing their own time, manner, and occasion to assert the rights and redress the wrongs of the country. This power can be lawfully exercised only by the Government of the United States. As a member of the family of nations, the United States practice order—not anarchy—as they always prefer lawful proceedings to aggressive violence or retaliation. The United States are happy in being able to believe that Brazil entertains the same sentiments.

The authorities at Bahia are understood to have unsuccessfully employed force to overcome the Wachusett and rescue the Florida, and to have continued the chase of the offender beyond the waters

48 of Brazil out upon the high seas.

Thus in the affair at Bahia, subordinate agents, without the knowledge of their respective governments, mutually inaugurated an unauthorized, irregular, and unlawful war. In desisting from that war on her part and in appealing to this government for redress, Brazil rightly appreciated the character of the United States and set an example worthy of emulation.

The disposition of the captured crew of the Florida is determined upon the principles which I have laid down. Although the crew are enemies of the United States, and, as they contend, enemies of the human race, yet the offenders were, nevertheless, unlawfully brought into the custody of this government, and therefore they could not lawfully be subjected here to the punishment which they have deserved. Nor

49 could they, being enemies, be allowed to enjoy the protection of the United States. They will, therefore, be set at liberty, to seek a refuge wheresoever they may find it, with the hazard of recapture when beyond the jurisdiction of this government.

The Florida was brought into American waters, and was anchored under naval surveillance and protection at Hampton Roads. While awaiting the representation of the Brazilian Government, on the 28th of November she sunk, owing to a leak, which could not be seasonably stopped.

The leak was at first represented to have been caused, or at least increased, by a collision with a war transport. Orders were immediately given to ascertain the manner and circumstance of the occurrence. It seemed to effect the Army and the Navy.

A naval court of inquiry and also a military court of inquiry

50 were charged with the investigation. The naval court has submitted its report, and a copy thereof is herewith communicated. The military court is yet engaged.

So soon as its labors shall have ended the result will be made known to your government. In the mean time it is assumed that the loss of the Florida was a consequence of some unforeseen accident, which cast no responsibility upon the United States.

I avail myself of this opportunity to renew to you, sir, the assurances of my high consideration.

WILLIAM H. SEWARD.

51 UNITED STATES OF AMERICA,
Department of State:

To all to whom these presents shall come, greeting:

I certify that the paper hereunto annexed is a true extract from an original letter on file in this department.

In testimony whereof, I, Hamilton Fish, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington this twenty-seventh day of May, A. D. 1873, and of the Independence of the United States of America the ninety-seventh.

[SEAL.] HAMILTON FISH.

Filed Dec. 4, 1873.

52 *Mr. Wilson to Mr. Seward.*

[Extract.]

WASHINGTON, *November 14th*, 1864.

To the honorable WILLIAM H. SEWARD,
Secretary of State, Washington:

SIR: I have the honor to inform you of the capture of the piratical cruiser Florida, on the morning of the 7th of October last, in the port of Bahia, Brazil, by the United States sloop-of-war Wachusett, under the command of Commander N. Collins.

I have the honor to be, very respectfully, your obedient servant,
THOMAS F. WILSON,
U. S. Consul at Bahia.

53 UNITED STATES OF AMERICA,
Department of State:

To all to whom these presents shall come, greeting:

I certify that the document hereunto annexed is a true copy from the records in this department.

In testimony whereof I, Hamilton Fish, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington this sixteenth day of May, A. D. 1873, and of the Independence of the United States of America the ninety-seventh.

[SEAL.] HAMILTON FISH.

Filed Dec. 4, 1873.

54 (Copy.)

DEPARTMENT OF STATE,
Washington, Dec. 29th, 1864.

THOMAS F. WILSON, esq'r,
Late U. S. Consul at Bahia, now at Pittsburg, Penn.:

SIR: Your communication of the 14th ultimo, setting forth the reasons which influenced you in lending your aid and countenance toward the capture of the Florida, on the morning of the 7th of October last, in the port of Bahia, Brazil, was received several days ago, and having been

brought to the notice of the President, I have been directed by him to state in reply that the course pursued by you involved a violation of your powers of so serious a character that he feels compelled to express his disapprobation of your conduct, and, to prevent the mischievous effect of the example, he has also directed me to inform you that your commission is revoked.

55 He regrets the necessity which requires your removal, especially in view of the very satisfactory manner in which you had previously and for so long a time discharged the duties of the post.

Another appointment to Bahia will be made so soon as a suitable person can be chosen.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

U. S. NAVY DEPARTMENT,
June 2, 1873.

I hereby certify that the annexed are true copies from the records and files of the Navy Department.

HOLMES E. OFFLEY,
Chief Clerk.

56 Be it known that Holmes E. Offley, whose name is signed to the above certificate, is now and was at the time of so signing chief clerk in the Navy Department, and that full faith and credit are due to all his official attestations as such.

In testimony whereof I have hereunto subscribed my name and caused the seal of the Navy Department of the United States to be affixed, at the city of Washington, this second day of June, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States the ninety-seventh.

[SEAL.] GEO. M. ROBESON,
Secretary of the Navy.

Filed Dec. 4, 1873.

57 (Copy.)

DEPARTMENT OF STATE,
Washington, 4th Aug., 1862.

The honorable GIDEON WELLS,
Secretary of the Navy:

SIR: Current newspaper reports, which of course may not be altogether reliable, give some reason for believing that the United States steamer Adirondack has lately continued the chase of a British vessel, the Herald, understood to be engaged in violating the blockade, even within the line of maritime jurisdiction—that is to say, within a marine league—of the shore of the island of New Providence.

The President desires that you ascertain the truth of this fact with as little delay as possible, since, if it be true, the commander of the Adirondack has committed an inexcusable violation of the law of na-

58 tions, for which acknowledgement and reparation ought to be promptly made.

To guard against any such occurrences hereafter, the President desires that you at once give notice to all commanders of American vessel' of war that this government adheres to, recognizes, and insists upon the principle that the maritime jurisdiction of every nation covers a full

marine league from its coast, and that acts of hostility or of authority within a marine league of any foreign country, by any naval officer of the United States, are strictly forbidden, and will bring upon such officers the displeasure of his government.

I have the honor to be, sir, your ob'd't servant,

W. H. SEWARD.

59 (Copy.)

NAVY DEPARTMENT.
Washington, August 16th, 1862.

SIR: I propose to revise and send to the commandants of squadrons and to cruisers, especially those in the Bahama Channel, the accompanying instructions, enjoining continued vigilance and fidelity in the discharge of their duty, but in all cases to exercise forbearance, and to keep within the restrictions specially enumerated in your communication of the 8th inst.

As it will be necessary to transmit to each of the officers in command the suggestions contained in your communication, which are generally cautionary, I desire to accompany them with others of a printed character in the line of duty, and also to call their attention to certain discriminations which should be made between papers that strictly
60 belong to the captured vessel, and others under lock and seal of the public authorities.

The law directs that the former shall be sent to the district court, while under international regulations the mails have a different destination.

The third regulation has been altered to conform to the views as understood in our personal interview.

Should you desire to make further suggestions, please advise me.

I am, respectfully, your obed't serv't,

GIDEON WELLS.

Hon. W. H. SEWARD,
Secretary of State.

61 (Copy.)

NAVY DEPARTMENT.
August 18, 1862.

SIR: Some recent occurrences in the capture of vessels, and matters pertaining to the blockade, render it necessary that there should be a recapitulation of the instructions heretofore from time to time given, and also of the restrictions and precautions to be observed by our squadrons and cruisers.

It is essential, in the remarkable contest now waging, that we should exercise great forbearance, with great firmness, and manifest to the world that it is the intention of our government, while asserting and maintaining our own rights, to respect and scrupulously regard the rights of others.

It is in this view that the following instructions are explicitly given:

First. That you will exercise constant vigilance to prevent supplies of arms, munitions, and contraband of war from being conveyed
62 to the insurgents, but that under no circumstances will you seize any vessels within the waters of a friendly nation.

Secondly. That while diligently exercising the right of visitation on all

suspected vessels, you are in no case authorized to chase and fire at a foreign vessel, without showing your colors and giving her the customary preliminary notice of a desire to speak and visit her.

Thirdly. That when that visit is made, the vessel is not then to be seized without a search carefully made, so far as to render it reasonable to believe that she is engaged in carrying contraband of war for or to the insurgents, and to their ports, directly or indirectly, by transhipment, or otherwise violating the blockade; and that if after visitation and search it shall appear to your satisfaction that she is in
63 good faith and without contraband actually bound and passing from one friendly or so-called neutral port to another, and not bound on proceeding to or from a port in the possession of the insurgents, then she cannot be lawfully seized.

Fourthly. That to avoid difficulty and error, in relation to papers which strictly belong to the captured vessel, and mails that are carried or parcels under official seals, you will, in the words of the law, "preserve all the papers and writings found on board, and transmit the whole of the originals unmutilated to the judge of the district to which such prize is ordered to proceed," but official seals or locks, or locks or fastenings of foreign authorities, are in no case nor on any pretext to be broken, or parcels covered by them, read by any naval authorities, but all bags, or other things covering such parcels, and duly sealed or fastened by foreign authorities, will be in the discretion of the United States
64 officer to whom they may come delivered to the consul, commanding naval officer, or legation of the foreign government, to be opened upon the understanding that whatever is contraband or important as evidence concerning the character of a captured vessel will be remitted to the prize court or to the Secretary of State at Washington, or such sealed bags or parcels may be at once forwarded to this department, to the end that the proper authorities of the foreign government may receive the same, without delay. You are specially informed that the fact that a suspicious vessel has been indicated to you as cruising in any limit which has been prescribed by this department does not, in any way, authorize you to depart from the practice of the rules of visitation, search, and capture prescribed by the law of nations.

Very respectfully,

GIDEON WELLES,
Sec'y of the Navy.

65 OFFICE U. S. MILITARY TELEGRAPH.
WAR DEPARTMENT.

The following telegram received at Washington 1.15 a. m. Nov. 8, 1864.

From Boston, Nov. 7, 1864.

Hon. G. WELLES:

SIR: I have the honor to report the arrival of the Kearsarge, off Scituate, from the Rocas. Left Wachusett and Florida at St. Thomas. The Florida was captured at the harbor of Bahia by the Wachusett, Oct. seventh (7th). We bring sixteen (16) prisoners and one (1) officer from the Florida.

JOHN A. WINSLOW,
Captain.

66 (Copy.)

U. S. STEAMER WACHUSETT,
St. Thomas, W. I., October 31st, 1864.

The honorable GIDEON WELLES,
Secretary of the Navy:

SIR: The following is a detailed report of the capture of the rebel steamer Florida, in the bay of San Salvador, Brazil, by the officers and crew of this vessel, without loss of life.

At three o'clock on the morning of the seventh day of October instant, we shipped our cable and steered for the Florida, about five-eight's of a mile distant. An unforeseen circumstance prevented us from striking her as intended; we, however, struck her on the starboard quarter, cutting down her bulwarks and carrying away her miz'en-mast and main yards. This ship was not injured.

Immediately upon striking we backed off, believing she would sink from the effects of the blow. In backing clear we received a few
67 pistol shots from the Florida, which was returned with a volley, and, contrary to my orders, two of our broadside guns were fired, when she surrendered.

In the absence of Captain Morris, who was on shore, Lieutenant Thomas K. Porter, formerly of the United States Navy, came on board and surrendered the Florida with fifty-eight men and twelve officers, making, at the same time, an oral protest against the capture. Five of the Florida's officers, including the commander and the remainder of the crew, were on shore. We took a hawser to the Florida and towed her to sea.

In contemplating the attack on the Florida in the bay, I thought it probable the Brazilian authorities would forbear to interfere as they had done at Fernando de Noronha, where the rebel steamer Alabama was permitted to take into the anchorage three American ships, and to take coal from the Cora Hatch within musket shot of the fort, and afterward, within easy range of their guns, to set on fire those unarmed vessels.

I regret, however, to state, that they fired three shotted guns
68 at us while we were towing the Florida out. Fortunately we received no *danger*.

After daylight a Brazilian sloop-of-war, in tow of a paddle gunboat, was discovered following us. With the aid of sail on both vessels, we gradually increased our distance from them.

We had three men slightly wounded; one only of the three is now on the sick report. I inclose a list of the prisoners. Those who have a star opposite their names were formerly in the United States Navy.

This vessel is ready for service. The Florida will require repairs of machinery, a new miz'en-mast, &c. The officers and crew manifested the best spirit. They have my thanks for their hearty co-operation, in which I beg to include Thomas F. Wilson, esq'r, United States consul at Bahia, who volunteered for any duty.

I am, sir, very respectfully, your obed't serv't,

N. COLLINS,
Commander.

69 *Charge and specification of charge preferred by the Secretary of the Navy against Napoleon Collins, a commander in the Navy of the United States.*

CHARGE.—Violating the territorial jurisdiction of a neutral government.

Specification.—In this, that on or about the seventh day of October, eighteen hundred and sixty-four, the said Commander Napoleon Collins, being then in command of the United States steamer Wachusett, in the Bay of San Salvador, Brazil, and manifestly within a marine league of the shore, at the port of Bahia, in said bay of San Salvador, did unlawfully attack and capture the steamer Florida and a portion of her officers and crew, within the territorial jurisdiction of the Government of Brazil, then and now a neutral power.

GIDEON WELLES,
Secretary of the Navy.

NAVY DEPARTMENT, *March* 23, 1865.

70 The judge-advocate then called upon the accused, the said Commander Napoleon Collins, to plead to the charge and specification preferred against him by the honorable Secretary of the Navy, whereupon the accused, to the said charge and specification, tendered the following plea :

Of the charge, guilty.

Of the specification, guilty, excepting the single word "unlawfully."

Thereupon the court was cleared for deliberation.

After some moments spent in deliberation, the court was opened, the accused being in attendance.

Thereupon the judge-advocate announced that the plea tendered by the accused was received and ordered to be recorded.

The plea tendered by the accused, rendering it 'necessary to produce any witnesses for the prosecution, the judge-advocate called upon the accused to adduce such testimony as he might deem ma-
71 terial to his defence.

Whereupon the accused responded that he had no testimony to offer, and submitted to the court the following paper :

"I respectfully request that it may be entered on the records of the court, as my defence, that the capture of the Florida was for the public good.

"April 7, 1865.

"N. COLLINS,
"*Commander.*"

And the same having been read, the court was cleared for deliberation.

The court thereupon proceeded to the reading of the proceedings heretofore had in this case, and to the consideration of the charge and specification preferred by the honorable Secretary of the Navy against the accused, the said Commander Napoleon Collins, and of their finding upon the same.

And after full and mature deliberation in the premises the court doth find the specification of the charge proved.

72 And the accused having pleaded guilty to the said charge, the court doth sentence the accused, the said Commander Napoleon

Collins, of the Navy of the United States, to be dismissed from the Navy of the United States of America.

L. M. GOLDSBOROUGH,
Rear Admiral and Senior Member of the Court.
H. H. BELL, *Commodore.*
MELANCTON SMITH, *Captain.*
P. DRAYTON, *Captain.*
THORNTON A. JENKINS, *Captain.*
JAMES ALDEN, *Captain.*
THOM. G. CORBIN, *Commander.*

Attest:

NATHANIEL WILSON,
Judge-Advocate.

U. S. steamer Baltimore, Washington navy-yard, April seventh, eighteen hundred and sixty-four.

73 *Deposition for libellants—Filed May 28th, 1875.*

In the district court of the United States for the District of Columbia.
In admiralty. No. 229.

IN RE COLLINS, N.,
vs.
STEAMER FLORIDA.

Depositions of N. Collins, L. A. Beardslee, for claimants, taken before and filed by R. D. Mussey, commissioner.

74 MONDAY, *November 17th*, 1873.

Met at my office, No. 323, 4½ st., N. W., Washington City, D. C., at 10 o'clock, a. m.

Present, F. W. Hackett, esq., for claimant; G. P. Fisher, R. M. Corwine, esq., for the U. S.

NAPOLEON COLLINS, a witness of lawful age, produced, sworn and examined on behalf of the claimants, says:

My name is Napoleon Collins. I am a commodore on the active list of the United States Navy. I am the libellant in this case.

Being further examined by M. Hackett for claimants, he says:

I was in the service of the United States as a commander in the Navy in the year 1864. On the 7th of October, in that year, I was in command of the steamer Wachusett at Bahia or San Salvador,
75 Brazil, in the bay of San Salvador, port of Bahia.

Q. State what capture was made on that day by you.

A. The rebel steamer Florida.

Mr. Hackett shows the witness the paper filed herewith and marked N. C., Exhibit A., R. D. M., and asks the witness what it is.

Mr. Corwine objects to the introduction of this paper as evidence.

A. To the best of my recollection it's a copy of the report I made to the Navy Department of this capture.

Q. Are the facts therein stated true, to the best of your knowledge and belief?

(Objected to. Mr. Hackett desires the commissioner to note that this paper was served on the claimants by the United States.)

A. They are.

Q. What did you do with the Florida after her capture?

76 A. I brought her to the United States, to Hampton Roads. She was put under the charge of Lt. Commander L. A. Beardslee, with a prize-crew.

Q. I' whose charge was she put at Hampton Roads?

A. Turned over to Admiral Porter, who was then commanding the North Atlantic squadron.

Q. Do you know what the armament of the Florida was?

A. I do not recollect distinctly.

Q. Do you know which had the heavier battery?

A. The weight of metal thrown from the Florida's battery and from her broadside was greater than that thrown from the battery and broadside of the Wachusett. I base this statement upon the reports of the officers made to me after the capture. I didn't weigh the metal myself nor measure the guns, but I was on board and saw the

77 guns and am satisfied that the report is correct.

Q. Where did you proceed from Hampton Roads, and how soon?

A. I don't recollect; in the latter part of November I was at Hampton Roads, in the neighborhood of three weeks, and was then ordered to Boston, and went there.

Cross-examination:

Being further examined by Mr. Corwine for the United States, he says:

Q. Will you be kind enough to state the exact position of the Florida when she was captured?

A. She was anchored in the harbor of Bahia, as well as I remember, about ⅜ of a mile from the shore.

(Mr. Hackett enters a general objection to apply to all questions asked with a view to establish the fact that the Florida was captured in violation of the neutrality of Brazil.)

78 Being further examined by Judge Fisher for the United States, he says:

Q. Had she made any hostile demonstration on the Wachusett or any American vessel in that port previous to the attack made on her by the Wachusett?

A. No, sir.

Q. Did the American consul take some part in the capture of that vessel.

(Objected to as irrelevant.)

A. No.

Q. What previous course did he pursue leading to her capture?

(Objected to as irrelevant.)

A. I asked him to ask the authorities to send her to sea, but I am not certain whether he made application or not. I don't believe he did. He informed me that the authorities there had determined to grant her the usual hospitalities of the port and make the necessary repairs.

79 Q. How did you come to make this attack?

A. Because she was flying the rebel flag—the new one, the white field, with a cross. She was well known to be the Florida.

Q. Did Thomas F. Wilson, the U. S. consul at Bahia, make any suggestions to you about the capture of the Florida or have any correspondence with you in reference to it before the capture was made?

(Objected to as irrelevant.)

A. He had a great many suggestions which I have now forgotten. We had no written correspondence, as well as I remember.

Q. Was he on board the Wachusett at the time of the attack on the Florida?

A. Yes, sir.

Q. How long had he been on board before the attack?

80 A. My impression is that he came on board about dusk—about sunset—and the capture was made about 3 o'clock the next morning. He remained there all the time, because I refused to let him go on shore. He came home with me because I could not land him.

Q. Why did you refuse to let him go on shore?

A. Because I didn't want the authorities on shore to know, as he then knew, that it was my intention to capture that vessel that night.

Q. Didn't he first propose to you to make the capture?

(Objected to because it is of no consequence whence the suggestion came from.)

A. No, sir; I have forgotten all the suggestions he made. The officers of the ship alone were consulted.

Q. Were you not aware—did you not know that it was a violation of the neutrality laws to cut the Florida out of the port of Bahia?

81 A. I did.

Q. At the time you made the attack on the Florida, at 3 o'clock in the morning, was she making any hostile demonstrations?

A. No, sir.

Q. Was she in any condition to resist?

A. I don't know whether she was or not. She had her awnings spread and was lying at anchor.

Q. Where was her crew?

A. As afterwards ascertained a portion was on board and another portion—nearly half—on shore.

Q. Where was the commanding officer?

A. He was on shore also.

Q. What officers of the Florida were on board at the time you cut her out?

82 A. When I said half the men were on shore I was mistaken, because there was less than half on shore. I understood that some 13 or 14 were drowned after the attack, trying to get on shore. The 1st lieutenant was on board. Judging from their muster-roll, the captain, paymaster, and, I think, two or three others were on shore. There is an official list of the officers brought home on file in the Navy Department.

Q. Were you aware of the fact that the American consul had asked the governor of Bahia to order the Florida out of that port and that he had refused to do so, and had given her the hospitalities of the port?

A. That is a mixed up question. I was not aware that Mr. Wilson had asked the governor of Bahia to order the Florida out of that port. In fact he told me that he didn't, but that he had asked him to detain

83 her there or seize her there and turn her over to him or something of that sort, and he had refused to do that. I requested Mr. Wilson to make the request of the governor to order her out of the port, but he failed to do so, as I understood him. I had no written correspondence with the governor or Mr. Wilson. I was informed that the governor intended to give her the hospitalities of the port both by consul Wilson and by the captain of a French sloop of war who came on board about 4 o'clock p. m., the day previous to the capture.

By the commissioner:

Q. Do you know anything further of interest to either party to this case? If so, state it fully.

A. I do not recall anything of value at present.

N. COLLINS.

Subscribed and sworn to before me this 17th day of November, A. D. 1873.

R. D. MUSSEY,
Commissioner.

81 *N. C. Exhibit A.—R. D. M.*

U. S. STEAMER WACHUSETT,
St. Thomas, W. I., October 31st, 1864.

The honorable GIDEON WELLES,
Secretary of the Navy:

SIR: The following is a detailed report of the capture of the rebel steamer Florida, in the bay of San Salvador, Brazil, by the officers and crew of this vessel, without loss of life.

At three o'clock on the morning of the seventh day of October instant, we shipped our cable and steamed for the Florida, about five eight's of a mile distant. An unforeseen circumstance prevented us from striking her as intended; we however struck her on starboard quarter, cutting down her bulwarks and caving away her miz'en mast and main yards. This ship was not injured.

Immediately upon striking we back' off, believing she would
85 sink from the effects of the blow. In backing clear we received a few pistol shots from the Florida, which was returned with a volley, and, contrary to my orders, two of our broadside guns were fired, when she surrendered.

In the absence of Captain Morris, who was on shore, Lieutenant Thomas K. Porter, formerly of the United States Navy, came on board and surrendered the Florida with fifty-eight men and twelve officers, making at the same time an oral protest against the capture.

Five of the Florida's officers, including the commander and the remainder of the crew, were on shore.

We took a hawser to the Florida and towed her to sea. In contemplating the attack on the Florida in the bay, I thought it probable the Brazilian authorities would forbear to interfere as they had done
86 at Fernando de Noronha, where the rebel steamer Alabama was permitted to take into the anchorage three American ships, and to take coal from the Cora Hatch within musket shot of the fort and afterward within easy range of their guns to set on fire those unarmed vessels. I regret, however, to state that they fired three shot'ed guns at us, while we were towing the Florida out. Fortunately we received no danger. After daylight a Brazilian sloop of war, in tow of a paddle gunboat, was discovered following us. With the aid of sail on both vessels, we gradually increased our distance from them. We had three men slightly wounded; one only of the three is on the sick report. I inclose a list of the prisoners; those who have a star opposite their names were formerly in the United States Navy.

87 This vessel is ready for service. The Florida will require repairs of machinery, a new miz'en mast, &c.

The officers and crew manifested the best spirits. They have my thanks for their hearty co-operation, in which I beg to include Thomas F.

Wilson, esq'r, United States consul at Bahia, who volunteered for any duty.

I am, sir, very respectfully, your ob'd't serv't.

N. COLLINS,
Commander.

88 FEBRUARY 13TH, 1874.

Met at my office, No. 633 F. st., N. W., Washington City, D. C., at

Present F. W. Hackett, esq'r, for claimants; G. P. Fisher, esq'r, for U. S.

LESTER ANTHONY BEARDSLEE, a witness of lawful age, produced, sworn and examined on behalf of the claimants, says:

My name is Lester Anthony Beardslee. I am a commander in the United States Navy; am stationed at the Washington navy-yard. I have been in the Navy 24 years the 5th of March next. I was an officer of the Wachusett at the time she captured the Florida. I was a lieutenant commander and the executive officer.

Being examined further by Mr. Hackett for the claimants, he says:

89 Q. Do you know of any money captured on board, and what became of it finally?

A. A safe was found on board the Florida which I guarded, and at the first opportunity I transferred it from the Florida, of which I was in command after the capture, to the Wachusett, by Com'r Collins' order. The safe was locked and no key to be found. After arrival at Hampton Roads I went north. Subsequently I received from the Treasury several hundred dollars as prize-money from the Florida. I also found a big package of U. S. postage stamps on board the Florida, which I transferred to the Wachusett. I should suppose there was $10,000 worth of stamps in the lot.

Q. State what you did with reference to the papers found on board?

90 A. Searched diligently and forwarded all found to Commodore Collins who was conveying me, and I was under his orders all the time I was bringing the Florida to Hampton Roads. At Hampton Roads the Florida was turned over to the commander-in-chief of the North Atlantic Fleet, Admiral Porter. At that time she was damaged but sea-worthy. I had brought her from Brazil to the United States. She needed thorough repairs. I brought her mostly under sail, but she did do some steaming; her engines were in working order, but she was better adapted for sailing. She was a strong, good vessel, except for the special repairs rendered necessary by the damage we had done her. She was built of teak and mahogany; her engines were somewhat out of order.

Q. Was the Florida of superior or inferior force to the Wachusett?

91 A. If it is necessary to go into a full calculation of all the points involved in an answer to this question, I cannot give an exact answer. Her battery was heavier both in broadside and round than the Wachusett. Her complement of officers was about the same. Her crew dispersed when we hit her and I have no means of knowing its force. We only captured 70 or 80 of them. In these elements she was superior. If I had had the Wachusett's men on board the Florida and she had been put in order I could have beaten the Florida with the Wachusetts crew on board. She was much faster than the Wachusett,

and coming home I sailed much faster than the Wachusett, having lost one mast.

Mr. Hackett here produces the papers filed herewith and marked Exhibit B 1 & 2, R. D. M., being the answer to a letter addressed to
92 the Navy Department calling for a statement of the armament of the Florida & Wachusett.

Q. Did you make an estimate of the power of the two batteries from personal observation?

A. I did.

Q. State how the result of that inquiry compares with this paper (Exhibit B 2)?

A. This paper is a correct statement.

Being further examined by Judge Fisher on behalf of the United States, the witness says:

Cross-examination:

Q. Do you know anything about the contents of that safe?

A. Nothing but hearsay.

Q. Where did you find those postage stamps?

A. In a locker in the cabin. I didn't count them. There was
93 a very large package of them in sheets. I was told by some on board that it was a supply sent out from the department to stock the New Orleans post-office and was captured from the Electric Spark.

L. A. BEARDSLEE,
Comd. U. S.

Subscribed and sworn before me this 13th day of February, 1875.

R. D. MUSSEY.
Commisssoner.

EXHIBIT B 1.

NAVY DEPARTMENT,
Washington, Nov. 25, 1873.

SIR: I transmit herewith papers containing the information, so far as the department is able to furnish it, called for by your letter of the 19th inst. in relation to the steamers Wachusett and Florida. The department has no "report showing or tending to show the value of the Florida."

I am, resp'y, your ob't s'v't,

GEO. M. ROBESON,
Sec't. of the Navy.

FRANK W. HACKETT, Esq.,
Washington, D. C.

94 EXHIBIT B 2.

Armament of the Florida.

2 7-inch Blakelsly rifles, on pivot.
6 6 " " " broadside.

Of Wachusett.

3 100-p'd'rs, Parrots.
2 30 " "
4 32 " smooth-bore.

	Lbs.
Florida, W. B. shot	520. 6
Wachusett, " " "	478. 8
(Wachusett less) diff	41. 8
Florida, W. B. shells	480. 7
Wachusett, " " "	465. 2
(Wachusett less) diff	15. 5

A true copy.

JNO. D. BRANDT,
Chief Clerk Bu. Ordnance.

95 I certify that the preceding depositions were taken before me at the times and places indicated in the captions thereof, at the request of the claimants; that the United States had notice thereof and attended by counsel as stated above; that, before examination, each witness was carefully cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, touching the matters whereof he should be examined; that the depositions were by me reduced to writing in the presence of the witnesses and by them read over after such reduction to writing and by them then in my presence signed; that I am not of counsel nor attorney for the parties, nor in anywise interested in the event of the suit; that my just and reasonable fee for taking said deposition is $25.00.

R. D. MUSSEY,
U. S. Commissioner, Commissioner.

96 *Decree of condemnation.—Filed June 5, 1875.*

In the supreme court of the District of Columbia.

NAPOLEON COLLINS ET AL. *vs.* THE STEAMER FLORIDA. } No. 229. District court. In prize.

This cause coming on to be heard upon the libel and answer, and the same being argued by counsel, and considered by the court, it is ordered, sentenced, and decreed, this 20th May, 1875, that the said steamer Florida, her armament, tackle, and apparel be, and hereby is, declared good and lawful prize to the United States of America; that the libellants are the captors as set forth in said libel, and entitled to participate in the proceeds of said prize as shall be hereafter ordered.

D. C. HUMPHREYS,
Justice.

97 *Appeal to gen. term.—June 24, 1875.*

In the supreme court of the District of Columbia.

NAPOLEON COLLINS *vs* STEAMER FLORIDA. } 229. Dist. court.

Enter appeal to gen. term from the decree of June 2, 1875, of dis.

court of the District of Columbia; also enter appeal to S. C. U. S. from same decree.

GEO. P. FISHER,
U. S. Dist. Att'y.
R. M. CORWINE,
Special Asst. Att'y Gen. for the U. S.

Proceedings before the supreme court of the District of Columbia in general term, commencing on the 3d Monday, 17th day of April, 1876. Present, Chief Justice Cartter, the other justices holding special terms.

FRIDAY, *May 19th*, 1876.

Session resumed pursuant to adjournment. Present, Chief Justice Cartter and Justices Wylie and MacArthur.

98 NAPOLEON COLLINS, LIBELLANT,
vs.
STEAMER FLORIDA, HER TACKLE, APPAREL & armament, respondent. } 229. District court. In prize.

This case came on to be heard upon the respondent's appeal from the decree of the district court of June 2, 1875, and was argued by counsel and submitted to the court, whereupon, upon consideration thereof, it is by the court here now ordered, sentenced, and decreed, that the libel be, and the same is hereby, dismissed with costs.

From which decree the libellant in open court prays and is allowed his appeal to the Supreme Court of the United States.

By order of the court.

Clerk's certificate.

CLERK'S OFFICE,
Supreme Court of the District of Columbia:

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 22d day of July, 1876.

R. J. MEIGS, *Clerk.*

(Indorsement on cover:) No. 319. Napoleon Collins, appellant, vs. The Steamer Florida, her tackle, &c. District of Columbia sup. court. Filed 14th December, 1876.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1879.

No. 92.

NAPOLEON COLLINS, *Appellant*,

vs.

THE STEAMER FLORIDA, ETC.

BRIEF FOR APPELLANT.

B. F. BUTLER,
WM. E. CHANDLER,
FRANK W. HACKETT,
For Appellant.

In the Supreme Court of the United States.

OCTOBER TERM, 1879.

NAPOLEON COLLINS, APPELLANT,
v.
THE STEAMER FLORIDA, ETC.
No. 92.

BRIEF FOR APPELLANT.

STATEMENT OF FACTS.

The United States steamer Wachusett, under command of Commander Napoleon Collins, U. S. N., captured the rebel cruiser Florida, October 7, 1864, in the port of Bahia, Bay of San Salvador, Brazil. The government of the United States had maintained that the Florida, "like the Alabama, was a pirate, belonging to no nation or lawful belligerent" (R. p. 13). As soon as the rebel cruiser had entered the port of Bahia, the United States consul at that port addressed a communication to the Brazilian authorities asking her detention, upon the ground that she had, "in concert with the Alabama, violated the neutrality of the empire by making captures, in the year 1863, near the island of Fernando de Noronha." This, however, the authorities refused to do (R. p. 10).

Capt. Collins put a prize officer and crew on board the Florida, and brought her, with the prisoners (being twelve officers and fifty-eight men), to Hampton Roads, Va., where she was turned over to Admiral Porter, then commanding the North Atlantic squadron (R. p. 22). On the 28th November, 1864, she sunk, owing to a leak which could not be reasonably stopped. There was some evidence that the leak was the result of having been run into by a war trans-

port (R. p. 14), but the United States represented that it was an accident, for which they were not responsible (R. p. 14).

The capture having been made within the neutral waters of Brazil, that sovereignty made it the subject of diplomatic correspondence, and claimed that the United States should (1) express regret at its occurrence; (2) dismiss the commander; (3) salute the Brazilian flag in the port of Bahia; (4) set the Florida prisoners free; and deliver the vessel to Brazil, in one of her ports (R. p. 12.)

The United States replied that the President would disavow and regret the proceedings; that captain Collins should be suspended, and directed to appear before a court-martial; that the flag of Brazil should be saluted; and that the prisoners should be set free (R. pp. 13, 14).

But the United States expressed no signs of a willingness to return the vessel. The circumstance of "an unforeseen accident" was alluded to, "which cast no responsibility upon the United States," but no regret was expressed at its occurrence. Nor does it appear in how deep water the vessel sank, or how great would be the difficulty of raising her, or of recovering her guns (R. p. 15).

Commander Collins was sentenced by a naval court-martial, April 7, 1865, to be dismissed from the navy; but the record does not show that the sentence was ever approved by the Secretary of the Navy, or carried into effect. On the contrary, at the time of the commencement of these proceedings, Commander Collins was on the active list of the navy, and had been promoted to the grade of Commodore (R. p. 21).*

The Secretary of the Navy was directed, by Act of Congress, July 28, 1866 (14 Stat. 322), to dispose of the property captured on board the Florida, and distribute the proceeds like other prize money.

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* NOTE. This brave officer continued in the service, and died while on active duty in foreign waters as a Rear-Admiral. Though the fact does not appear of record at the time of preparing this brief, counsel beg the privilege of saying this much in justice to his memory.

Commodore Collins, on the 24th April, 1871, by virtue of the provisions of the prize act (R. S. 4,625), giving the captors, under certain circumstances, the right to institute proceedings in any district for adjudication of prize, filed his libel in the District Court of the District of Columbia, in behalf of himself and the officers and crew of the Wachusett, praying condemnation of the Florida, her tackle, &c., in prize. The District Attorney appeared for the purpose of contesting the libel. The District Court, however, entered a decree of condemnation (R. p. 27). Upon appeal, the court in general term ordered the libel to be dismissed with costs; from which decree the libellant was allowed his appeal to this court.

POINTS OF LAW.

I.

The present procedure is correct in form. The testimony of Commodore Collins and Commander Beardslee, though themselves captors, is admissible. Irregularities, such as that captors are not parties, and did not bring the prize into any court for adjudication, are tolerated in prize courts. *United States* v. *Bales of Cotton*, 1 Woolw. 236.

Where a commanding officer inadvertently permitted the master, crew, and passengers of the captured vessel to go on shore, and did not bring any one of them home with the prize, the testimony of captors themselves, and of witnesses present at the capture, was allowed to be taken and read on the hearing. *The Falcon*, Bl. Pr. Cas. 52. See *Schooner Zavalla and Cargo*, *ibid* 173, where testimony was not taken from documents or witnesses found on board at time of seizure. "The court will be governed by the palpable merits of the case, and not sacrifice clear right to formalities of practice." BETTS, J., *ib.* 173; *The Wave*, *ib.* 329; *The Shark*, *ib.* 215.

Nor was the amendment proposed by libellants in the District Court (R. p. 2) strictly necessary, that the libel should pray condemnation to "the use of the United States." In

the English Admiralty, where prize suits are conducted by the King's proctor, though the prosecution be in the name of the captors and on their petition, the condemnation may be to the Crown and not to the captors. *The Genoa Ships*, 4 Rob. 329; followed by BETTS, J., 1 Abb. Adm. 498.

II.

Captors are entitled to have the question of prize or no prize settled by this court. Act June 30, 1864, chap. 174; U. S. Rev. St., sec. 4,625. This is for protection against her former owners, and further gives the captors the right (if adjudged good prize) to proceed against the colliding vessel, if the prize was sunk through such vessel's negligence. The Florida's hull, guns, etc., are of some determinable value, and the question of ownership therein must be decided.

The Executive branch of the Government has no right to instruct the court as to the disposition of this libel, nor are the wishes of the State Department to have any force whatever in this tribunal, sitting as a high court of prize.

In *The Elsebe*, 5 Rob. 173, Sir WM. SCOTT decided that the power of the Crown to direct the release of property seized as prize, before adjudication and against the will of the captors, is not taken away by any grant of prize conferred in the Order of Council, the Proclamation, or the Prize Act. In that case the ships were actually released, and orders had been given by the Lords of Admiralty for that purpose, before the question was raised in the prize court. In the case at bar, no order of release was ever given or promised to Brazil.

The decision in *The Elsebe* serves to point out the relation of the Crown to the rights of the captors, being British subjects. It determines nothing under our Constitution. It is true that its doctrine has been cited with approval in *Commodore Stewart's Case*, 1 N. & H. 113, the head note of which is, "A captor has no such interest in a vessel recaptured before condemnation as would compel the Government to press a claim against a neutral government, in

one of whose ports the prize had been illegally captured." But as the recaptured vessel had never come into the jurisdiction of a prize court, it was unnecessary to instance Sir WM. SCOTT's decision for the purpose of determining the point raised in the case.

For the views of Mr. Wheaton on the subserviency of Sir WM. SCOTT to the orders of the Crown, see Laurence's Wheaton 973; *Cf.* Roberts Adm. & Prize 480, 519.

In Great Britain, the issue of peace or war is lodged in the Crown. The *jus persequendi* in capture being conveyed only in the Orders in Council, all claims of the captor are subordinated to the right in the Crown of making such disposition as it pleases of the captured property. The Crown may control the conduct of a prize suit from the beginning. The Queen has supreme power, with advice of her council, to relax her belligerent rights, and so far to make law for the prize court. *The Phenix*, 1 Spink 306.

The right to make capture in the name of the United States does not come from the Executive, but from Congress. Until condemnation, no property vests in the sovereign or the captor. 10 Opinions Att'y Gen. 519. Should the United States desire immediately to make use of the captured vessel, an appraisement is made of her value, which in case of subsequent condemnation represents the prize fund. Act Mar. 3, 1863, § 2.

The Act of June 30, 1864, instituted an improved system of procedure in the prize court. Although modelled upon the English prize acts, it presents certain features essentially distinct from those acts. In England, the prize court entertains and exercises a peculiar but extraordinary jurisdiction, specially conferred by Parliament, and to be exercised in time of war only. Roberts Adm. & Prize 444. In this country, the prize courts are ever open to prize causes. Their jurisdiction extends not only to cases specially provided for by Congress, but to limits recognized by international law, or the custom and usage of nations. Do. 445. The captors themselves are authorized, under certain circum-

stances, to commence proceedings (Rev. Stats., sec. 4,625), a right unknown to the English prize law. And this right has been invoked in the present instance.

The inquiry is not raised in this case, as in *The Elsebe*, whether in time of war the Executive can give up to a foreign nation a captured vessel, without making reparation to the captors. But the question is fairly before the court, whether once having gained jurisdiction, and having custody of the vessel, a prize court, sitting in the United States in time of peace, will be controlled by the wishes of the Executive in determining whether the vessel be or be not good prize. The prize act makes it the duty of the District Attorney, upon report of the prize master, to file a libel against prize property, and to "proceed diligently to obtain a condemnation and distribution thereof." Rev. Stats., sec. 4,618. The Attorney General, by opposing this libel and asking its dismissal, is asserting a power not granted by the prize act. At all events, he must satisfy this court that upon principles of prize law this libel cannot be maintained. It is not enough that the Department of State prefer that the *Florida* should not be adjudged lawful prize.

III.

The alleged violation of the neutrality of Brazil is no defence to this libel. This is an objection which the neutral nation alone can interpose. *The Lilla*, 2 Sprague 177; *The Sir William Peel*, 5 Wall. 517; *The Adela*, 6 Wall. 266.

"A capture made within neutral waters, is, as between enemies, deemed to all intents and purposes rightful; it is only by the neutral sovereign that its legal validity can be called in question, and as to him, and him only, is it to be considered void;"—per Mr. Justice STORY, in *The Anne*, 3 Wheat. 447, where it was held that even a consul, unless specially authorized by his government, cannot interpose a claim of violated sovereignty. *The Sancta Trinita*, cited in a note to *The Anne*, shows that the French law is like

the English and American in this respect. See III Phillimore Int. Law (CCCL), page 453, where *The Anne* is approvingly cited. 1 Kent Comm., 12th ed., 117, note 1; do. *121; *The Etrusco*, 3 C. Rob. 162, note.

IV.

But it is objected that the Florida was captured in direct violation of the orders of the Secretary of the Navy, and that her capture was therefore illegal and void. To distribute the proceeds of the sale of this vessel as prize would be to reward officers for disobedience of orders.

The orders of the Secretary are mere regulations for the discipline of the navy. Their violation subjects the offender to a court-martial. "If the sovereign should, by a special order, authorize the capture of neutral property, for a cause manifestly unfounded in the law of nations, it would afford a complete justification of the captors in all tribunals of prize." Per STORY, J., in *Maisonnaire* v. *Keating*, 2 Gall. 325. But the orders of the Secretary of the Navy can go no further than international law itself in stamping the capture with illegality. Commander Collins was found guilty by a court-martial of disobeying the orders of the Secretary. The sentence of dismissal was not approved by the Secretary. So long as Brazil was satisfied, the Navy Department and the country rejoiced that the capture had been made.

Nor can it be urged that the capture was not for the use and benefit of the United States. It is a matter of public record, that this Government lodged before the tribunal of arbitration at Geneva claims for direct losses to our merchant marine amounting to over four millions of dollars, inflicted by this very cruiser, the Florida. It is not easy to estimate the importance and value of this capture to the people of the United States.

Suppose that immediately on her arrival at Hampton Roads the Southern Confederacy had collapsed: Brazil would have demanded reparation, but not the return of the vessel.

Would not the Florida in that event have been decreed good prize? What difference between this supposed state of things, and that where, after the war was over and the honor of Brazil had been satisfied, the wrecking company had raised the Florida, pumped her out, and she had been sold, and the proceeds held as a prize fund? In neither case could the United States set up the invasion of neutral rights as against the claim of the captors to have the ship declared good prize. Upon what principle, then, can the alleged violations of the orders of the department be set up in this case? It is only another form of insisting that neutral rights were invaded,—a circumstance that appears to be of very little consequence when the United States reaped all the substantial fruits that could have resulted from a capture made in the open sea. Besides, this objection is completely removed by the action of Congress in their legislation of 28th July, 1866. By the 7th section of the Civil Appropriation Act of that date it was enacted as follows: "That the Secretary of the Navy be and he is hereby authorized to dispose of the property saved from the rebel steamer *Florida*, and distribute the proceeds thereof as other prize money is required by law to be distributed."

V.

There is a *res* in existence. The ship and her guns are sunk in a river. The court will not trouble itself to inquire whether it will pay to raise her.

VI.

The Florida was of superior force to the Wachusett. All the net proceeds should be therefore decreed to libellants. Act June 30, 1864, sect. 10. This rule of distribution was observed in disposing of the property worth $20,399.43 captured on board.

B. F. BUTLER,
WM. E. CHANDLER,
FRANK W. HACKETT,
For Appellant.

Supreme Court of the United States.

October Term, 1879.

NAPOLEON COLLINS, *Appellant*,
vs.
THE STEAMER FLORIDA, ETC. } No. 92.

Supplementary Brief for Appellant.

Another ground upon which this libel may stand, if the Court denies the decree against the whole vessel, her equipment, apparel, and contents, is to have condemnation and a decree, and order of distribution of the "property saved from the rebel steamer 'Florida.'" Sec. 7, chap. 296, acts of 1866, 14 Statutes at Large, 322.

This statute authorizes "the Secretary of the Navy to dispose of the property saved from the rebel steamer *Florida*, and distribute the proceeds thereof as other prize money is required by law to be distributed." How is other prize property to be by law disposed of and distributed as prize money?

By suit in a Prize Court for condemnation, to be directed to be brought by the Secretary of the Navy, within three months after the property is sent in; and if he fails so to do, then by the captors, as in the present suit. (Rev. Stats., Sec. 4625.) And, for this purpose, the Secretary of the Navy is entitled to employ, and have paid, special counsel. (Sec. 4620, 4648, and 4649.)

Neither Congress nor the Secretary of the Navy can condemn captured property in prize. That is solely within the jurisdiction of a Prize Court, adjudicating according to the principles of public law.

The record finds that there is property saved, and to be saved, were the title to the property once settled by a decree of condemnation.

If there is no property "saved," yet, in case of every capture, there should be proceedings for adjudication to protect the captors and determine the rights of property under the capture.

3 Phillimore, * 575–581.

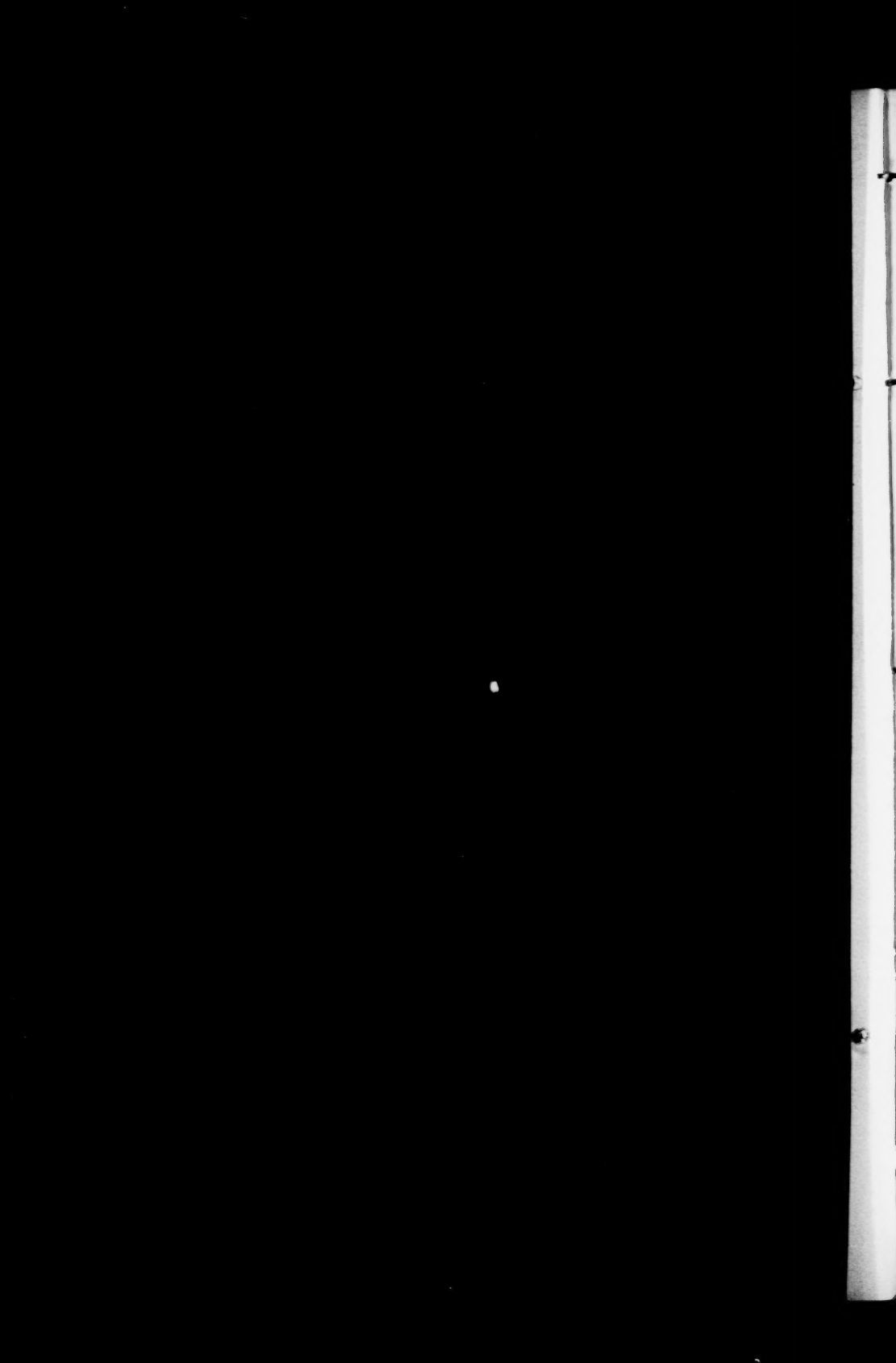
Ibid, * 533–4.

As to distribution, See 3 Phillimore, * 630.

The Act of Parliament did not intend to alter, nor can it alter the law of nations.

Heathfield vs. *Chilton*, 2 Burrows, 2016.

B. F. BUTLER,
WM. E. CHANDLER,
FRANK W. HACKETT,
For Appellant.



In the Supreme Court of the United States.

OCTOBER TERM, 1879.

NAPOLEON COLLINS
vs.
STEAMER FLORIDA, &C. } No. 92.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1879.

NAPOLEON COLLINS
vs.
STEAMER FLORIDA, &c. } No. 92.

BRIEF FOR THE UNITED STATES.

This was a proceeding in prize begun April 24, 1871, under section 4625 of the Revised Statutes, because of the capture of the rebel steamer Florida in the port of Bahia, Brazil, on the 7th of October, 1864.

The Florida had been brought to Hampton Roads immediately afterwards, and was casually sunk off Newport News on the 28th of November, 1864 (Record, folios 2 and 49), before action could be had upon the demand of the Government of Brazil for her surrender. However, on the demand of that Government the capture was disavowed (Record, folios 44, 47, and 48), and the officers who took part in it were punished. (Record, folios 54 and 72.)

I. Although the mere fact of a capture in the port of a friendly nation may not prevent proceedings in prize

(The Richmond, 7 Cranch, 102), yet that circumstance, connected with an intervention by such friendly nation, and a disavowal of the capture at the earliest practicable moment, seems plainly to remove all foundation for such proceedings. (The Twee Gebroeders, 3 Rob., 162; The Anna Catherina, 5 Rob., 15; The Eliza Ann, 1 Dod., 350; Wildman, Search, &c., 12). It is of the very essence of jurisdiction in these cases that the government whose vessel made the capture shall have *authorized* or *ratified* it. (Rev. Stat., sect. 4613.) A solemn statement by the *political* branch of the government that a particular capture was made without authority makes an end of controversy upon that point for the *judicial* branch.

II. Under the circumstances attending the loss of the Florida the jurisdiction of the prize court was lost.

"But it is admitted that if possession of the thing seized be actually as well as constructively lost, as by recapture, escape, or a voluntary discharge of the captured vessel, the jurisdiction of the prize court over the subject is lost. (Kent 1, 359.)

CHAS. DEVENS,
Attorney-General.
S. F. PHILLIPS,
Solicitor-General.